



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/141798

PRELIMINARY RECITALS

Pursuant to a petition filed June 20, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on August 06, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare benefits because of income in excess of FoodShare income limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner's FoodShare case was subject to review in March 2012.

3. As part of that review process Petitioner submitted his 2011 income tax return. That return indicates that Petitioner receives \$48,292.00 of rental income for property that he owns. It also indicates that Petitioner depreciates the property with that depreciation expense for 2011 being \$21,816.00. After depreciation and other expenses that tax return indicates that Petitioner has \$5414.00 of income from the property.
4. Petitioner receives Social Security disability income in the amount of \$917.90 per month. He also has \$200 a month paid to him by a renter separate from the amount shown at finding of fact # 3. To this \$1117.90 per month the agency added the depreciation back to the income from the rent of the property noted at finding # 3 and concluded that Petitioner's net income of the rental property is \$27,230.00 per year or \$2269.16 per month. Thus Petitioner's total monthly income was determined to be \$3387.06 per month.
5. Petitioner was granted a deduction for \$275.34 of excess medical expenses, an \$880.57 deduction of shelter costs, the standard deduction of \$147.00 and the standard utility allowance of \$444.00 in the calculation of his FoodShare eligibility.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$147 per month for a household of 1 person, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$459.00 on the shelter cost deduction unless a household has an elderly, blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

The terms 'elderly' and 'disabled' are terms with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).
FSH, §3.8.1.1.

Also, of particular note here, depreciation is not an allowed expense for the purpose of determining FoodShare eligibility and allotment levels. *FSH, §4.3.3.5.3.*

Petitioner contends he never sees any of the \$48,292 reflected on schedule E of his 2011 federal income tax return and it should not be counted for FoodShare purposes.

Petitioner stated that he sold the nonresidential property on a land contract and that the purchaser makes the payments directly to the bank which still holds a mortgage in the name of Petitioner. He did submit a copy of the land contract this indicates that the property at issue had been sold for \$350,000 in April of 2008 with the purchaser being required to pay \$2241.09 per month plus taxes and insurance. It does not appear that land contract was recorded. Petitioner also submitted bank records that he believes indicate that the land contract purchasers make payments directly to the mortgage. Account numbers are blocked out and, while this is understandable for privacy purposes, it does make it difficult to track the transactions. It does not, however, appear that the payments equal the amount shown on petitioner's income tax return.

Petitioner's position as to how his income should be counted is not, however, what is reflected on his income tax return. The return clearly shows that Petitioner claims whatever payments are made as rent and takes a deduction for various expenses including interest paid on the mortgage and depreciation. And, again, depreciation is not allowable expense for purposes of determining FoodShare eligibility allotment levels. I conclude, therefore, that the agency correctly determined Petitioner's income and correctly discontinued his FoodShare benefits as his income was in excess of net income limits. See eligibility calculation printouts in Exhibit 2.

I also note the following Federal Regulation:

...
 (vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded
 7 CFR 273.9(c)(1)(vii).

Finally, Petitioner notes that the \$200 per month rental payment is no longer received. A change reported in one month typically affects benefits in the following month (*see FSH, §6.1.3.3.*); thus once that is reported to the local agency and documented the agency will have to determine whether or not it has an impact on Petitioner's eligibility for the month following the month of that report.

CONCLUSIONS OF LAW

1. That the available evidence indicates that the agency correctly determined Petitioner's income.
2. That the agency correctly discontinued Petitioner's FoodShare benefit as his net income is in excess of program income limits.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

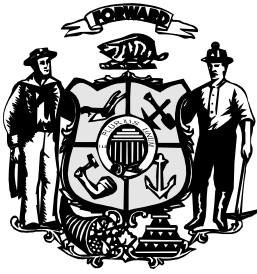
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of September, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Kenosha County Human Service Department - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 5, 2012.

Kenosha County Human Service Department
Division of Health Care Access and Accountability